

THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 28th day of December, 2006

W.P.No.3700 of 2006

Between:

Sunkara Thamma Rao

... Petitioner

and

The A.P. Cooperative Tribunal,
Visakhapatnam, rep. by its
Registrar & others

... Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.3700 of 2006

ORAL ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to Judgment dated 25-1-2006 made in O.A.No.220 of 2004 on the file of A.P. Cooperative Tribunal, Visakhapatnam and to quash the same as arbitrary, illegal and violative of principles of natural justice.

Petitioner is the auction purchaser. Respondent No.5 (since died) obtained a loan of Rs.20,000/- from the 3rd respondent-society. Respondent No.6 was the husband of the legal representative of the 5th respondent and GPA holder. After the death of 6th respondent, his wife – 7th respondent – came on record. When loan instalments were not paid by the 5th respondent, proceedings were initiated under the provisions of the Andhra Pradesh Cooperative Societies Act,1964 for recovery of the loan amount and accordingly, the Bank obtained an Award on 18-6-1992. Pursuant to the said Award, sale was conducted. At that stage, the 6th respondent, GPA holder of the 5th respondent, filed O.A.No.1 of 1997 on the file of A.P. Cooperative Tribunal, Vijayawada, questioning the sale notice, without impleading the auction purchaser-petitioner herein. Initially, stay was granted by the Tribunal. Thereafter, the petitioner himself impleaded by filing M.P.No.27 of 1997. On contest, the stay was vacated. On 18-3-1997 the sale was confirmed and a sale certificate was issued on 19-3-

1997. Later on, since respondents 5 and 6 died, O.A.No.1 of 1997 got abated and an Order to that effect was passed by the Tribunal on 24-4-2000. Thereafter, respondent No.7 herein filed Writ Petition No.2830 of 2004 questioning the Award dated 18-6-1992 and also the consequential proceedings including the sale certificate issued by the 2nd respondent-Deputy Registrar of Cooperative Societies vide CEP No.2/95-96, dated 19-3-1997. However, the said Writ Petition was dismissed on 16-2-2004 observing that it is open to the 7th respondent herein to approach the A.P. Cooperative Tribunal, Visakhapatnam for appropriate orders. Questioning the said Order an appeal in W.A.No.546 of 2004 was filed, but the same was also dismissed on 12-4-2004 observing that the application of the 7th respondent herein in O.A.No.1 of 1997 was pending on the file of the A.P. Cooperative Tribunal, Vijayawada and as such, nothing prevented her to pursue that remedy. Thereafter, it seems, the 7th respondent moved the Tribunal. In the meanwhile, A.P. Cooperative Tribunal at Visakhapatnam was constituted and as such, O.A.No.1 of 1997 was renumbered as O.A.220 of 2004 on the file of A.P. Cooperative Tribunal at Visakhapatnam. The Tribunal, after hearing both sides, by an Order dated 25-1-2006 allowed the appeal and set aside the auction notice issued by the 1st respondent dated 2-11-1996 and the sale confirmation order dated 18-3-1997 and remanded the matter to the Deputy Registrar of Cooperative Societies for fresh disposal. The respondent-society was also directed to accept the repayment of loan amount from the 7th respondent herein. Questioning the said order, the present Writ Petition is filed.

Now, it is the contention of the 7th respondent that in pursuance of the Order passed by the Tribunal, she had deposited the entire

amount with the 3rd respondent-society.

There is no necessity of going into all the details. It is a fact that the auction purchaser was a party to all the earlier proceedings between the parties. But, when O.A.No.220 of 2004 was filed, he was not impleaded. By that time, according to the petitioner, the sale itself was confirmed and deliberately, the 7th respondent has not impleaded him as a party. It appears that when the petitioner filed M.P.No.27 of 1997 in O.A.No.1 of 1997 at A.P. Cooperative Tribunal, Vijayawada and the same was transferred to Visakhapatnam and numbered as O.A.220 of 2004 on the file of A.P. Cooperative Tribunal at Visakhapatnam, the name of the petitioner was not arrayed in the cause title. That seems to be the cause for not issuing notice to the petitioner. May be, the petitioner is aware of the proceedings before this Court and also O.A.No.220 of 2004 before the A.P. Cooperative Tribunal, Visakhapatnam, but that itself does not mean that the appeal could have been disposed of without hearing him. I am of the opinion that the petitioner was not only a necessary, but also a proper party for adjudication of the appeal in O.A.No.220 of 2004 and the petitioner had no opportunity to participate in those proceedings. Therefore, there is a gross violation of principles of natural justice. On this ground alone, the Order dated 25-1-2006 passed in O.A.No.220 of 2004 is liable to be set aside and is accordingly, set aside. The matter is remitted back to the Tribunal for fresh consideration, after impleading the petitioner and issuing notice to him. Petitioner herein shall be impleaded as a party respondent in the said O.A. and he shall be given an opportunity to file counter and lead evidence, if necessary and the Tribunal then dispose of the matter in accordance with law, within a period of six months from today.

The Writ Petition is accordingly disposed of. No order as to

costs.

28-12-2006

prk

Office to despatch
the order along with the
entire record to A.P.Cooperative
Tribunal, Visakhapatnam
within one week.

(B.O.)

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